

## REMARKS

The Office Action mailed February 16, 2011, has been received and reviewed. Claims 1-25 are currently pending in the application. Claim 23 was allowed. Claims 1-22, 24 and 25 stand rejected. Applicant proposes to amend claims 1, 8, 14, 19, 21, 24, and 25, and respectfully requests reconsideration of the application as presented herein. Support for the amendments may be found in at least paragraphs [1035], [1039], [1040], [1042], and [1043] of the as-filed specification. No new matter has been added.

### 35 U.S.C. § 103(a) Obviousness Rejections

#### Obviousness Rejection Based on U.S. Patent No. 6,112,101 and NPL XP-001017264

Claims 1-4, 6, 8-10, 12-16, 18-20, 24 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,112,101 to Bhatia *et al.* ("Bhatia") in view of NPL XP-001017264 to Siwko ("Siwko"). Applicant respectfully traverses this rejection, as hereinafter set forth.

To establish a *prima facie* case of obviousness ***the prior art reference (or references when combined) must teach or suggest all the claim limitations.*** *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be "a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicants' disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 1-4, 6, 8-10, 12-16, 18-20, 24 and 25 are improper because the elements for a *prima facie* case of obviousness are not met.

Specifically, the rejection fails to meet the criterion that the prior art references must teach or suggest all the claims limitations.

The Office Action concedes that “Bhatia fails to disclose determining an elapsed time from an effective time of said initial probability.” *Office Action*, page 6. Applicant agrees.

The Office Action then alleges:

Siwko discloses...determining an elapsed time from an effective time of said initial probability; adjusting said initial call request block probability based on said elapsed time (see sections II-IV). (*Office Action*, page 6).

Applicant respectfully disagrees. With respect to sections II-IV, the teaching of Siwko appears to relate to connection admission of a network. Specifically, the teachings of Siwko concern a model description, dropping policies, call admission control (CAC) policies, and random capacity change time (RCCT) CAC policies. A CAC policy is a set of rules to determine whether any given call request should be admitted or blocked. Further, a RCCT CAC policy appears to concern a system size, a boundary curve, and a number of active calls at a time in which a request is issued. *Siwko*, pages 1151-1152. Applicant asserts that, other than reciting the claim language and citing to a broad disclosure (i.e., sections II-IV) of Siwko, the Examiner has failed to specifically show how Siwko teaches *determining*, at the mobile station, ***an elapsed time from an effective time*** of said initial call request block probability.

Nonetheless, in an effort to advance prosecution, Applicant proposes to amend each of claims 1, 8, 14, 19, 24, and 25. Claims 1, 8, 14, 19, 24, and 25, as proposed to be amended, each recite, in part “receiving at a [mobile station/apparatus] an initial call request block probability, an effective time stamp of the initial call request block probability, and a time period value...determining at the [mobile station/apparatus] an elapsed time from the effective time stamp; and adjusting at the [mobile station/apparatus] said initial call request block probability at least once every time period value based on said elapsed time determined within the [mobile station/apparatus].”

Applicant respectfully asserts that neither Bhatia nor Siwko, either individually or in any proper combination, teach or suggest “receiving at a [mobile station/apparatus]...***an effective time stamp of [an] initial call request block probability, and a time period value***,” as recited in claims 1, 8, 14, 19, 24, and 25, as proposed to be amended herein. More specifically, Bhatia and

Siwko both appear to lack any teaching of a *time stamp of an initial call request block probability*. Furthermore, neither Bhatia nor Siwko teach or suggest of receiving...*a time period value*.

Additionally, Applicant respectfully asserts that neither Bhatia nor Siwko, either individually or in any proper combination, teach or suggest “determining at the [mobile station/apparatus] *an elapsed time from the effective time stamp*,” as recited in claims 1, 8, 14, 19, 24, and 25, as proposed to be amended herein. As noted above, it appears that neither Siwko nor Bhatia teach or suggest a time stamp and, furthermore, neither Siwko nor Bhatia teach or suggest determining...*an elapsed time from the effective time stamp*.

Moreover, Applicant respectfully asserts that neither Bhatia nor Siwko, either individually or in any proper combination, teach or suggest “adjusting at the [mobile station/apparatus] said initial call request block probability *at least once every time period value based on said elapsed time*,” as recited in claims 1, 8, 14, 19, 24, and 25, as proposed to be amended herein.

For at least these reasons, Applicant respectfully asserts that neither Bhatia nor Siwko, either individually or in any proper combination, teach or suggest Applicant’s invention as claimed in independent claims 1, 8, 14, 19, 24, and 25, as proposed to be amended herein.

Therefore, since neither Bhatia nor Siwko teach or suggest Applicant’s claimed invention including either receiving at a [mobile station/apparatus] an initial call request block probability, an effective time stamp of the initial call request block probability, and a time period value,” “determining at the [mobile station/apparatus] an elapsed time from the effective time stamp,” or “adjusting at the [mobile station/apparatus] said initial call request block probability at least once every time period value based on said elapsed time determined within the [mobile station/apparatus],” these references, either individually or in any proper combination, **cannot** render obvious, under 35 U.S.C. §103, Applicant’s invention as claimed in independent claims 1, 8, 14, 19, 24, and 25. Accordingly, Applicant respectfully requests the rejections of claims 1, 8, 14, 19, 24, and 25 be withdrawn.

The nonobviousness of independent claims 1, 8, 14 and 19 preclude rejection of claims 2-4, 6, 7, 9, 10, 12, 13, 15, 16, 18 and 20 which variously depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. See In re Fine,

5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 8, 14 and 19 and claims 2-4, 6, 7, 9, 10, 12, 13, 15, 16, 18 and 20 which variously depend therefrom.

Obviousness Rejection Based on Bhatia, Siwko and EP 0658014

Claims 7, 13 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bhatia in view of Siwko and further in view of European Patent Applications No. EP 0658014 to Redden *et al.* ("Redden").

The nonobviousness of independent claims 1, 8 and 14 preclude rejection of claims 7, 13 and 18 which respectively depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 8 and 14 and claims 7, 13 and 18 which respectively depend therefrom.

Obviousness Rejection Based on Bhatia, Siwko, Redden and U.S. Patent No. 4,493,102

Claims 5, 11 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bhatia in view of Siwko and Redden and further in view of U.S. Patent No. 4,493,102 to Weishaupt ("Weishaupt").

The nonobviousness of independent claims 1, 8 and 14 preclude rejection of claims 5, 11 and 17 which respectively depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 8 and 14 and claims 5, 11 and 17 which respectively depend therefrom.

Obviousness Rejection Based on Bhatia, Redden and Siwko

Claims 21 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bhatia in view of Redden and further in view of Siwko

To establish a *prima facie* case of obviousness ***the prior art reference (or references when combined) must teach or suggest all the claim limitations.*** *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be “a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicants’ disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 21 and 22 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art references must teach or suggest all the claims limitations. Regarding independent claim 21 and claim 22 depending therefrom, Applicant’s independent claim 21, as proposed to be amended, includes claim limitations not taught or suggested in the cited references.

The Office Action states that “Bhatia fails to disclose determining an elapsed time from an effective time of said initial probability.” Office Action, page 9. Applicant agrees.

The Office Action then alleges:

Siwko discloses ... determining elapsed time of the call request block probability and adjusting said call request block information (see sections II-IV). (Office Action, p. 9).

As noted above, Applicant assert that, other than reciting the claim language and citing to a broad disclosure (i.e., sections II-IV) of Siwko, the Examiner has failed to specifically show how Siwko teaches determining, at the mobile station, ***an elapsed time from an effective time*** of said initial call request block probability. Redden fails to remedy this deficiency.

Nonetheless, in an effort to advance prosecution, Applicant proposes to amend claim 21. Claim 21, as proposed to be amended, recites, in part “a receiver configured for receiving at the mobile station an initial call request block probability, an effective time stamp of the initial call request block probability, and a time period value, wherein the initial call request block probability is a percentage of calls to be blocked as specified by a network element; and a processor configured for determining at the mobile station an elapsed time from the effective time stamp, wherein the block probability is determined by a network element and adjusting at the mobile station said initial call request block probability at least once every time period value based on said elapsed time determined within the mobile station.”

Applicant respectfully asserts that neither Bhatia nor Redden nor Siwko, either individually or in any proper combination, teach or suggest “receiving at the mobile station an initial call request block probability, an effective time stamp of the initial call request block probability, and a time period value,” as recited in claim 21, as proposed to be amended herein. More specifically, Redden and Bhatia and Siwko each appear to lack any teaching of a *time stamp of an initial call request block probability*. Furthermore, neither Bhatia nor Redden nor Siwko appear to teach or suggest receiving...*a time period value*.

Additionally, Applicant respectfully asserts that neither Bhatia nor Redden nor Siwko, either individually or in any proper combination, teach or suggest “determining at the mobile station an elapsed time from the effective time stamp,” as recited in claim 21, as proposed to be amended herein. As noted above, it appears that neither Bhatia nor Redden nor Siwko teach or suggest a time stamp and, furthermore, neither Bhatia nor Redden nor Siwko teach or suggest determining...*an elapsed time from the effective time stamp*.

Moreover, Applicant respectfully asserts that neither Bhatia nor Redden nor Siwko, either individually or in any proper combination, teach or suggest “*adjusting* at the mobile station said initial call request block probability *at least once every time period value based on said elapsed time*,” as recited in claim 21, as proposed to be amended herein.

For at least these reasons, Applicant respectfully asserts that neither Bhatia nor Redden nor Siwko, either individually or in any proper combination, teach or suggest Applicant’s invention as claimed in independent claim 21, as proposed to be amended herein.

The nonobviousness of independent claim 21 precludes rejection of claim 22 which

depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 21 and claim 22 which depends therefrom.

**Allowable Subject Matter**

Claim 23 is allowable.

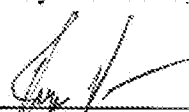
Applicant acknowledges this indication with appreciation.

**CONCLUSION**

Claims 1-25 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicant's undersigned representative.

Respectfully submitted,

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